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STATE OF WISCONSIN

BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY

PROCEEDINGS AGAINST :

FINAL DECISION AND ORDER

BURNET REALTY, INC.,

96 REB 306

TOBIN A. SAURO

96 REB 305

Respondents.

LS9903255REB

The parties to this action for the purposes of Wis. Stats. Sec. 227.53 are:

Burnet Realty, Inc.
219 2nd St.
Hudson, WI 54019

Tobin A. Sauro
2237 Sixth St. E
St. Paul, MN 55119

Wisconsin Real Estate Board
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached *Stipulation* as the final disposition of the portion of this matter which pertains only to the principals, Burnet Realty, Inc. and the broker, Tobin Sauro. This settlement is subject to the approval of the Real Estate Board ("Board"). The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board adopts the attached *Stipulation* and makes the following:

FINDINGS OF FACT

1. **Burnet Realty, Inc.**, ("Burnet Realty"), 219 2nd St., Hudson, WI 54019, is and was at all times relevant to the facts set forth herein, a real estate corporation licensed to practice as a real estate brokerage in the State of Wisconsin, pursuant to license # 833997, which was originally granted on July 31, 1990.

2. **Tobin A. Sauro**, ("Sauro"), 2237 Sixth St. E., St. Paul, MN 55119, is and was at all times relevant to the facts set forth herein, a real estate broker licensed to practice as a real estate broker in the State of Wisconsin pursuant to license # 47436, which was originally granted on May 17, 1994

3. At all times relevant hereto and in regard to the real estate sales transactions described herein, Sauro, was the broker of record for the Burnet Realty office located in Hudson, Wisconsin. Sauro maintains his office in Stillwater, Minnesota. The Hudson Office of Burnet Realty is a "branch" office as defined in Section RL 17.02(1) Wis Adm Code.

4. Tom K. Nielsen ("Nielsen"), is and was at all times relevant to the facts set forth herein, a real estate salesperson licensed to practice as a sales agent in the State of Wisconsin pursuant to license # 37695, originally granted to him on August 6, 1992. Nielsen is the associate branch manager in Hudson, Wisconsin and was supervised by broker, Sauro, at all times relevant hereto.

5. Willard A. Seiffert, ("Seiffert"), 508 Bauer Rd., Hudson, WI 54016, is and was at all times relevant to the facts set forth herein, a real estate salesperson licensed to practice as a real estate salesperson in the State of Wisconsin pursuant to license # 26689, which was originally granted on April 28, 1987. Seiffert is an independent contractor affiliated with Burnet and was supervised by broker, Sauro, at all times relevant hereto.

GLINIECKI/VELMAN TRANSACTION (96 REB 305):

6. On or about February 26, 1995, Nielsen, acting as a seller's agent, drafted a WB-11 Residential Offer to Purchase wherein the buyers, Matthew M. Gliniecki and Patti A. Velman, offered to purchase property located at 459 Jensen Ln., Hudson, Wisconsin for \$119,900. A copy of the WB-11 Residential Offer to Purchase signed by Gliniecki and Velman is attached to this document as **Exhibit A**, and incorporated herein by this reference.

7. On or about 10/13/94, the sellers, Kathleen and Daniel Ostlund, signed a Real Estate Condition Report regarding property located at 459 Jensen Ln., Hudson, Wisconsin. A copy of the Real Estate Condition Report signed by buyers and sellers is attached to this document as **Exhibit B**, and incorporated herein by this reference.

8. The information contained on the Ostlund Real Estate Condition Report states as *"incorrect"* on Line 17, that the owner is *"aware of a defect caused by unsafe concentrations of, unsafe conditions relating to, or the storage of hazardous or toxic substances on, neighboring properties."* **Exhibit B.**

9. On or about June 15, 1992, the Wisconsin Department of Natural Resources ("DNR") produced an East Hudson ground water study showing the boundaries of contaminated well water in the St. Croix/Hudson area. The boundary on this map includes Jensen Lane. A copy of the June 15, 1992, study is attached to this document as **Exhibit C** and is incorporated herein by this reference.

10. On or about July 24, 1992, DNR revised the well construction zone map and changed the boundaries of the well advisory zone. The new boundary line extends down Jensen Lane. A copy of this July 24, 1992, revision is attached hereto as **Exhibit D**, and is incorporated herein by this reference.

11. On or about November 7, 1994, DNR sent a letter to Wisconsin brokers through the Wisconsin Board of Realtors informing of the need to disclose the well water contamination problem in the Town of Hudson to all clients and potential buyers who are interested in purchasing property in the well water advisory area. A copy of the November 7, 1994 letter from DNR is attached hereto as **Exhibit E**, and is incorporated herein by this reference.

12. On or about August, 1995, an advisory notice was sent by DNR to all real estate offices and homeowners in the Hudson area, *"Status Report: Special Well Construction Advisory Area."* A copy of the August, 1995 DNR letter is attached to this document as **Exhibit F**, and incorporated herein by this reference.

13. Nielsen did not disclose to buyers, Gliniecki and Velman, that the property on Jensen Lane was directly adjacent to the designated well water advisory zone at the time that he showed the property to the buyers or when he prepared the Offer to Purchase on their behalf.

14. The Uniform Residential Appraisal Report prepared for the lender noted the subject area was in an area identified by the Department of Natural Resources (DNR) as having possible contamination in the ground water. The report stated further that there were specific regulations for new well construction in this area and the parties were advised to contact the local DNR for more information and is attached and incorporated hereto as **Exhibit G**. The buyers did not receive a copy of the appraisal.

15. The buyers did not discover the underground water contamination problem until after the closing on the property. On February 5, 1996, Gliniecki received a letter from Ayres Associates which stated the analytical test results of water samples from his water supply. The water samples had been collected in November or December of 1995. The test results showed that the Gliniecki well contained one or more volatile organic compounds ("VOC") at concentration levels exceeding the "Preventive Action Limit ("PAL") " A copy of the February 5, 1996, letter from Ayres Associates to Gliniecki is attached hereto as **Exhibit H**, and incorporated herein by this reference.

DELTA CONSTRUCTION, INC.,/FREDRICK/McELROY (96 REB 306):

16. In June, 1994, Seiffert showed a residential building lot, located on the corner of Wert Road and Jensen Lane in Parkview Estates, Hudson, Wisconsin, to Mark Frederick and Julie McElroy. The lot was owned by Delta Construction, Inc., a home construction company.

17. Burnet Realty did not have a listing contract with Delta Construction, Inc. regarding the lot.

18. On or about June 23, 1994, Seiffert, acting as agent of the "seller", drafted a WB-11 Residential Offer to Purchase the lot with a contingency that a specific house plan be constructed by Delta Construction, Inc. Due to changes in the house plan, the Offer to Purchase drafted by Seiffert was not closed. A copy of the Offer to Purchase is attached hereto marked as **Exhibit I**, and incorporated herein by this reference.

19. Seiffert did not disclose to Frederick or McElroy that the property on the corner of Wert Road and Jensen Lane neighbored the well advisory zone.

20. Subsequent to June 23, 1994, Frederick and McElroy entered into a verbal agreement with the builder regarding the revised plan for construction of a new home on the same lot which they had offered to purchase with the assistance of Seiffert. Seiffert agreed to withdraw from the transaction and forego his commission in order to enable the builder and buyer to reach acceptable price terms. The builder constructed the agreed upon home.

21. The sales transaction closed in November of 1994. On or about August 22, 1996, McElroy received a letter from Ayres Associates informing her that water collected from their supply in May or June, 1996, tested above the PAL. Frederick and McElroy had to purchase a filtration system for the home as a consequence of this contamination at a cost of approximately \$1,000, attached and incorporated hereto as **Exhibit J**.

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Board has jurisdiction to act in this matter pursuant to Sec. 452.14, Wis. Stats.

1. The Wisconsin Real Estate Board is authorized to enter into the attached *Stipulation* pursuant to Sec. 227.44(5), Wis. Stats

3. Respondent **Burnet Realty, Inc.** has violated:

Sec. 452.12(3)(b) of the Wisconsin Statutes, Sec. 452.14(4), Chapter RL 17.02(2) and Chapter RL 17.10(1) of the Wisconsin Administrative Code by employing a non-broker branch manager to supervise licensees employed at a branch office and is liable for the acts or omissions of the non-broker branch manager and the licensees.

4. Respondent **Sauro** has violated:

Sec. 452.12(3)(b) of the Wisconsin Statutes of the Wisconsin Administrative Code by employing a non-broker as an associate branch manager to supervise the activities of its branch office and the licensees who were employed in the branch office.

Sec. 452.14(3)(i) and Chapter RL 17.08(1) of the Wisconsin Statutes by not competently supervising the actions of his agents in a manner which safeguards the public interest.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached *Stipulation* is hereby accepted.

IT IS FURTHER ORDERED, that the real estate brokerage license of Respondent Burnet Realty, Inc., real estate license No. 91-833997, is **REPRIMANDED**.

IT IS FURTHER ORDERED, that Respondent **Burnet Realty, Inc.** pay a forfeiture in the amount of **\$300.00** and pay partial costs of this matter in the amount of **\$400.00** within 30 days of the date of this order by making payment of the same to the Department of Regulation and Licensing, P.O. Box 8935, Madison, WI 53708-8935.

IT IS FURTHER ORDERED, that in the event Respondent Burnet Realty, Inc. fails to pay the \$300.00 forfeiture and the \$400.00 costs within the time and in the manner as set forth above, then and in that event, and without further notice to the Respondent Burnet Realty, Inc., the real estate broker license shall be immediately suspended without further hearing and without further Order of the Board, and said suspension shall continue until the full amount of said forfeiture and costs have been paid to the Department of Regulation and Licensing and his failure to pay the costs shall be considered a violation of this Order by the Board.

IT IS FURTHER ORDERED, that **Tobin A. Sauro**, real estate license No. 90-47436, is **REPRIMANDED**.

IT IS FURTHER ORDERED, that Respondent Tobin A. Sauro, within 6 months of the date of this Order, successfully complete the following course modules from the real estate broker's course at an educational institution approved by the Department of Regulation and Licensing:

a. The five hour consumer protection module (RL 25.02(2)(h) and

submit proof of this same in the form of verification from the institution providing the education to the Real Estate Board, P.O. Box 8935, Madison, WI 53708-8935. None of the education completed pursuant to this requirement may be used to satisfy any continuing education requirements that are or may be instituted by the Board or the Department of Regulation and Licensing.

IT IS FURTHER ORDERED, that in the event Respondent Tobin A. Sauro fails to comply with the required education as set forth above, or fails to verify the same to the Department of Regulation and Licensing as set forth above then and in that event, and without further notice to the Respondent Tobin A. Sauro, his real estate license shall be immediately suspended without further hearing and without further Order of the Board, and said suspension shall continue until he has complied with the terms of this Order.

IT IS FURTHER ORDERED, that the portion of the files 96 REB 305 and 306 which pertain to Burnett Realty, Inc. and Tobin Sauro, are hereby closed.

Dated this 25th day of March, 1999.

WISCONSIN REAL ESTATE BOARD

By_ James R. Imhoff, Jr._

